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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/789,581	02/26/2004	Konstantin Othmer	15814.16	3412		
22913	7590	03/01/2010	EXAMINER			
Workman Nydegger 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111				SING, SIMON P		
ART UNIT		PAPER NUMBER				
2614						
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/789,581	OTHMER, KONSTANTIN	
	Examiner	Art Unit	
	SIMON SING	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 January 2010.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 28,29,52,54-58 and 67-91 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 52,54-58 and 69-88 is/are allowed.
 6) Claim(s) 28 and 89-91 is/are rejected.
 7) Claim(s) 29, 67 and 68 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 28 and 89-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz et al. US 2002/0176546 in view of Chaturvedi et al US 7,043,266.

1.1 Regarding claim 28, Dietz discloses a mobile phone 100 in figure 1. Dietz teaches:

receiving real-time voice data at the mobile phone during a call;
playing the real-time voice data being received to a user at the mobile phone while buffering received voice data in a memory (when the mobile phone 10 is moved away from a user's ear);
in response to input from a recipient (the mobile phone 10 is moved back to user's ear) replay at least a portion of the buffered voice data in memory;
preventing the real-time voice data being received from being played;
replaying the voice data buffered in memory while continuing to buffer received voice data until the playback catches up with real-time voice data received; and

removing silence in the buffered voice data (para. 0006, 0016 and 0017; page2, claim 7).

Dietz recording a telephone conversation in the call (para. 0016), but fails to teach that the call is an instant connect call (push-to-talk call).

However, Chaturvedi discloses network based instant connect call in figure 1. Chaturvedi teaches a normal mode and a push to talk (PTT) mode (instant connect mode) for mobile stations 12 and 14 (column 5, lines 24-27; column 6, lines 28-64; column 8, lines 4-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Dietz's reference with the teaching of Chaturvedi so that the mobile phone would have comprised a PPT mode, because such a modification would have enabled a user to communicate in different communication modes using a single device.

1.2 Regarding claim 89, Dietz discloses a mobile phone 100 in figure 1. Dietz teaches:

receiving real-time voice data at the mobile phone during a call;
buffering received voice data in a memory (when the mobile phone 10 is moved away from a user's ear); and
removing silence in the buffered voice data (para. 0006, 0016 and 0017; page2, claim 7).

Dietz recording a telephone conversation in the call (para. 0016), but fails to teach that the call is an instant connect call (push-to-talk call).

However, Chaturvedi discloses network based instant connect call in figure 1. Chaturvedi teaches a normal mode and a push to talk (PTT) mode (instant connect mode) for mobile stations 12 and 14 (column 5, lines 24-27; column 6, lines 28-64; column 8, lines 4-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Dietz's reference with the teaching of Chaturvedi so that the mobile phone would have comprised a PPT mode, because such a modification would have enabled a user to communicate in different communication modes using a single device.

1.3 Regarding claim 90, Dietz teaches that playing the voice data while the voice data is being buffered (when the mobile phone 10 is moved away from a user's ear) as stated above.

1.4 Regarding claim 91, Dietz replaying the voice data buffered in memory while continuing to buffer received voice data until the playback catches up with real-time voice data received (pra. 0017-0018).

Allowable Subject Matter

2. Claims 52, 54-58 and 69-88 allowed.

3. Claims 29, 67 and 68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a) US 6,574418 (Akiba et al) discloses removing silent blocks in a buffer/memory.
- b) US 6,885,987 (Buchholz et al) discloses a mobile station which is able to insert missing voice packets in its buffer (figure 6; column 9, lines 24-61).
- c) US 7,277,720 (Lazaridis) discloses a mobile station with PTT and recording capabilities (column 1, lines 6-26; column 4 lines 26-33).
- d) US 6,370,375 (Shively) discloses mobile station with PTT and recording capabilities (column 5, lines 38-56)..

4. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Simon Sing whose telephone number is 571-272-7545. The examiner can normally be reached on Monday - Friday from 8:30 AM to 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang, can be reached at 571-272-7547. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

/Simon Sing/
Primary Examiner, Art Unit 2614